

January 5, 1998

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**MEDIA
ACCESS
PROJECT**

Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Geraldine Matise
Chief,
Network Services Division
Federal Communications Commission
Room 235
2000 M Street, NW
Washington, DC 20554

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JAN - 5 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

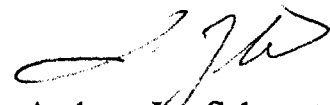
RE: Petition to Deny
CC Docket 97-211
(MCI-WorldCom)

Dear Ms. Salas and Ms Matise:

This letter accompanies diskettes containing files for electronic distribution of a petition to deny filed today in the above-shown matter on behalf of the Office of Communication of the United Church of Christ.

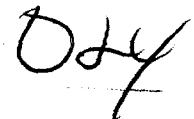
Please contact the undersigned in the event you have any questions.

Sincerely,



Andrew Jay Schwartzman
President and CEO

cc of:
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

<i>In re</i> Applications of	)	<i>In re</i> Application of)
))
WorldCom, Inc. and MCI	)	MCI Telecommunications)
Communications Corporation	) CC Docket 97-211	Corporation	) File No.
	)		) 73-SAT-P/L-96
For Transfer of Control of MCI	)	For Authority To Construct,)
Communications Corporation to	)	Launch and Operate a Direct)
WorldCom, Inc.	)	Broadcast Satellite System)
	)	at 110 W.L. ⁰)
<i>In re</i> Application of	)	<i>In re</i> Application of)
))
MCI Telecommunications	)	TCI Satellite Entertainment, Inc.)
Corporation	)	and)
and	) File No.)
PRIMESTAR LHC, Inc.	) 106-SAT-AL-97	PRIMESTAR, Inc.	) File No.
	)		) 91-SAT-TC-97
For Consent to Assignment of	)	For Transfer of Control of)
Non-Final Direct Broadcast	)	TEMPO Satellite, Inc.)
Satellite Authorizations	)	System at 110 W.L. ⁰)

**PETITION TO DISMISS OR DENY TRANSFER OF CONTROL OF
NON-FINAL DIRECT BROADCAST SATELLITE AUTHORIZATIONS
AND FOR REFERRAL TO THE FULL COMMISSION FOR ACTION**

The Office of Communication of the United Church of Christ, Consumers Union ("CU") and the National Association for Better Broadcasting (referred to herein as "UCC, *et al.*"),¹ by their counsel, Media Access Project, respectfully call upon the full Commission² to dismiss or deny the application for transfer of control of non-final authorizations to operate Direct Broadcast Satellite

¹The petitioners' interests are set forth in their August 22, 1997 *Petition to Dismiss or Deny* filed in the related case, File No. 91-SAT-TC-97. The Declaration of Gene Kimmelman submitted in fulfillment of 47 USC §309(d) is provided as Attachment A hereto.

²Because this Docket consolidates numerous applications relating to the proposed merger of MCI Communications Corporation and WorldCom, Inc., it would appear that the Commission's intent is that these proceedings will be acted upon by the full Commission. Indeed, only the full Commission has the power to administer this matter. UCC, *et al.* have previously shown that the Commission staff lacks jurisdiction to act upon the authorizations at issue in this petition under existing delegations of authority. See, *Petition to Dismiss or Deny Assignment of Non-Final Authorizations and for Referral to the Full Commission for Action*, September 25, 1997, pp. 6-7.

systems from MCI Telecommunications Corporation ("MCIT") to WorldCom, Inc. ("WorldCom"). UCC, *et al.* do not here take any position with respect to other aspects of the proposed merger of MCI Communications Corporation (MCIT's parent) and WorldCom.

MCIT seeks to transfer control of its *non-final* authorization to construct, launch and operate a high-power Direct Broadcast Satellite service. This proceeding is addressed in Volume III, Section 1.B of the amended WorldCom application submitted to the Commission on November 21, 1997. WorldCom, the transferee, would substitute itself as the applicant for assignment of MCIT's DBS authorization to an as-yet non-existent entity to be known as PRIMESTAR, Inc. ("PRIMESTAR"). UCC, *et al.* have set forth in detail the serious legal impediments to grant of the MCIT/PRIMESTAR application in their September 25, 1997 petition to deny the PRIMESTAR assignment. *See, Petition to Dismiss or Deny Assignment of Non-Final Authorizations and for Referral to the Full Commission for Action*, September 25, 1997. Those arguments are incorporated by reference here.

In addition, UCC, *et al.* respectfully call attention to their pending *Petition to Consolidate, and for Stay or, in the Alternative, to Hold in Abeyance*, also filed on September 25, 1997. In that petition, UCC, *et al.* seek to have the non-final DBS authorization here at issue, File No. 73-SAT-P/L-96, consolidated with the pending application for assignment of that DBS authorization to PRIMESTAR, File No. 106-SAT-AL-97. UCC, *et al.* also argue, *inter alia*, that the Commission must complete action on the pending administrative appeal of the staff decision granting MCIT's DBS authorization, *MCI Telecommunications Corporation*, 11 FCCRcd 16275 (1996), *application for review pending*, before it can consider transfer or assignment of that authorization. *See Application for Review Or, in the Alternative, Request to Vacate*, File No. 73-SAT-P/L-96, filed January 6, 1997, pp. 3-6 ("*Application for Review*"). Grant of the requested procedural relief would, perforce,

consolidate the instant proceeding as well, since the transfer of control of the MCIT authorization shares the same procedural and substantive defects which characterize the underlying authorization.

Simply put, MCIT's DBS authorization was improperly granted, since MCIT's application failed to meet the basic statutory requirements of the Communications Act. Nothing could be more fundamental to Commission policy than the principle that where there are outstanding questions as to the seller's basic statutory qualifications, the Commission will not give its consent to a transfer. Because MCIT never established its qualifications, there is "no authorization susceptible of transfer,..." *Jefferson Radio v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964). *See also, Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026 525 (D.C. Cir. 1981); *Northland Television, Inc.*, 42 RR2d 1107, 1110 (1978).

WorldCom, the transferee here, has made representations which, if true, would demonstrate that it is qualified to be a Commission licensee. UCC, *et al.* do not here take issue with those claims. However, like PRIMESTAR and MCIT before it, in seeking transfer of the invalid MCIT authorization, WorldCom does not affirmatively accept the Commission's authority under Section 310(b) of the Communications Act. Rather, it seeks to assume control of the MCIT authorization on the premise that it will "continue operations pursuant to the authorizations" previously granted to MCIT. *Application for Transfer of Control*, CC Docket 97-211, Volume III, Section 1.B, p. 4. Thus, WorldCom seeks to evade character, competition and other policies of the Commission with respect to the DBS license it would hold.³ The Commission lacks statutory authority to grant a Title

³UCC, *et al.* recognize that under existing FCC policy, WorldCom could thereafter choose to be regulated as a non-broadcast licensee with respect to its programming practices. The issue here relates to how the Commission enforces the Title III licensing process itself. *See Application for Review*, pp. 3-6.

III broadcasting license on this basis.

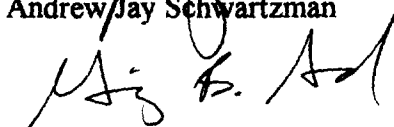
CONCLUSION

WHEREFORE, UCC, *et al.* respectfully ask that the application for transfer of control of the non-final authorizations be summarily dismissed or denied, and that the Commission grant all such other relief as may be just and proper.

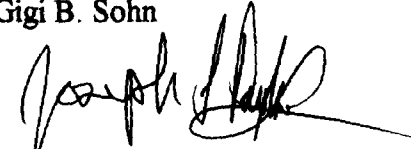
Respectfully submitted,



Andrew Jay Schwartzman



Gigi B. Sohn



Joseph S. Paykel

Media Access Project
Suite 400
1707 L Street, NW
Washington, DC 20036
(202) 232-4300
Counsel for Petitioners

January 5, 1998

ATTACHMENT A

Jan-05-98 12:28P

P.02

DECLARATION**GENE KIMMELMAN DECLARES AS FOLLOWS:**

1. I am Co-Director of the Washington Office of Consumers Union ("CU").
2. This declaration is submitted in support of the *Petition to Dismiss or Deny Transfer of Control of Non-Final Direct Broadcast Satellite Authorizations And For Referral to the Full Commission For Action* filed on behalf of CU, the Office of Communication of the United Church of Christ and the National Association for Better Broadcasting. The petition opposes the application of WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") for transfer of control of MCI to WorldCom insofar as the applicants seek to transfer authority held by MCI Telecommunications Corporation to construct, launch and operate a high-power Direct Broadcast Satellite service
3. I have reviewed the factual assertions contained in the *Petition to Dismiss or Deny Transfer of Control of Non-Final Direct Broadcast Satellite Authorizations And For Referral to the Full Commission For Action*, and I declare that they are true to the best of my knowledge.

I hereby state under penalty of perjury
that the foregoing is true and correct.

Executed on: January 5, 1997


Gene Kimmelman

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To	Randy Schuttsman	From	Gene Kimmelman		
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CERTIFICATE OF SERVICE

I certify that on January 5, 1998, the foregoing *PETITION TO DISMISS OR DENY TRANSFER OF CONTROL OF NON-FINAL DIRECT BROADCAST SATELLITE AUTHORIZATIONS AND FOR REFERRAL TO THE FULL COMMISSION FOR ACTION* was served by United States Mail, postage prepaid, to the following:

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Andrew Jay Schwartzman

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